

Chapter 15: Business Occupation Tax, Licenses, and Regulation

Article 1: Business and Occupation Taxes

*State law reference(s) Business and occupation taxes, O.C.G.A. §48-13-5 et seq.

Section 1: Generally

- (a) Each person engaged in a business, trade, profession or occupation whether with a location within the City of Dunwoody or in the case of an out of state business with no location in Georgia exerting substantial efforts within the City of Dunwoody pursuant to O.C.G.A. Section 48-13-7 shall pay an occupational tax for said business, trade, profession or occupation.
- (b) Occupation taxes shall be based upon gross receipts in combination with profitability ratio and number of employees. The profitability ratio for the type of business will be determined from nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.
- (c) The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any profession, trade or calling.

Section 2: Definitions

Unless specifically defined elsewhere, as used in this Article, the term:

- (a) *Administrative fee* means a component of an occupation tax that approximates the reasonable cost of handling and processing the occupation tax.
- (b) *Business* where used in this Article shall be held to mean any person, sole proprietor, partnership, corporation, trade, profession, occupation or other entity and the efforts or activities associated thereby for the purposes of raising revenue or producing income.
- (c) *Dominant line* means the type of business within a multiple line business from which the greatest amount of income is derived.
- (d) Except as otherwise provided, “*Employee*” means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual’s compensation or whose employer issues to such individual for purposes of documenting compensation a form W-2 but not a form I.R.S. 1099.
- (e) *Gross receipts* means total revenue of the business or practitioner for the period, including without being limited to the following:
 - (i) Gross receipts shall include the following:

- (A) Total income without deduction for the cost of goods sold or expenses incurred;
 - (B) Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
 - (C) Proceeds from commissions on the sale of property, goods, or services;
 - (D) Proceeds from fees charged for services rendered; and
 - (E) Proceeds from rent, interest, royalty, or dividend income.
- (ii) Gross receipts shall not include the following:
- (A) Sales, use, or excise taxes;
 - (B) Sales returns, allowances, and discounts;
 - (C) Inter-organizational sales or transfers between or among the units of a parent subsidiary controlled group of corporations, as defined by 26 U.S.C. § 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities;
 - (D) Payments made to a subcontractor or an independent agent for services which contributed to the gross receipts in issue;
 - (E) Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this Chapter, if such funds constitute 80 percent or more of the organization's receipts; and
 - (F) Proceeds from sales of goods or services which are delivered to or received by customers who are outside the state at the time of delivery or receipt.
- (f) *License* shall mean a permit or certificate issued by the City that allows an entity to operate lawfully in the City of Dunwoody. A license does not create any rights to operate in violation of any provision of this Code of Ordinances and it may be denied, suspended or revoked by the City at any time pursuant to the procedures set forth herein. This definition applies to any license issued pursuant to this Chapter.
- (g) *Location or office* shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. The renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to

another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor unless the real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.

- (h) *Occupation tax* means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business.
- (i) *Practitioner of professions and occupants* is one who by State Law requires state licensure regulating such profession or occupation. This definition shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.
- (j) *Regulatory fees* means payments, whether designated as license fees, permit fees, or by another name, which are required by the City of Dunwoody as an exercise of its municipal power and as a part of or as an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the City of Dunwoody. A regulatory fee does not include an administrative or registration fee. Regulatory fees do not include required occupation taxes for businesses and professions located in the City of Dunwoody.
- (k) *Tax Collector* shall mean an individual duly appointed and named as tax collector to serve in that capacity. In the absence of a duly appointed tax collector, the Finance Director or City Manager may perform the duties of the tax collector.

Section 3: Business License Required

- (a) Except as specifically exempted herein, all persons, firms, companies (including limited liability companies), corporations, (including professional corporations) and other business entities, now or hereafter operating a business within the City of Dunwoody, are hereby required to register their business or office, obtain an occupation tax certificate for their business or office, and pay the amount now or hereafter fixed as taxes and fees thereon as authorized under the provisions of Article 1 of Chapter 13 of Title 48 of the Official Code of Georgia, Annotated, as amended.
- (b) Where a person conducts business at more than one (1) fixed location or has multiple business trade names, each trade name shall be considered to be separate for the purpose of the occupation tax and the gross receipts of each will be returned on a form furnished by the Finance Department in accordance with the provisions of this Article.
- (c) The occupation tax certificate shall serve as a business license. Additional business licenses may be required as established by the City.
- (d) Stock or manufacturing companies or other companies, subsidiaries, agencies, district offices, branch offices, corporations or individuals, having either their business proper or their general branch offices located within the City of Dunwoody, and either represented by the officers of the company, or any agent, for the purpose of soliciting patronage for the

same, or for the transaction of any business pertaining thereto, shall be required to obtain a occupation tax certificate.

- (e) All licenses granted under this Article shall expire on December 31 of each year. Licensee(s) shall be required to file an application in each ensuing year. The applicant shall be required to comply with all rules and regulations for the granting of licenses.

Section 4: Estimation of gross receipts; filing of returns.

- (a) All occupation taxes levied by this Article are levied on the amount of business transacted during the current calendar year and the number of employees to be employed in the business conducted. However, for convenience of both the City and the taxpayer, those businesses subject to the occupational tax shall on or before March 15 file with the Finance Department a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as an estimate of gross receipts for making payments on the occupation tax for the current calendar year. The number of employees reported for the current year's business operations may be based upon the number of employees employed in the business conducted during the previous year. Applicants or owners engaged in the business shall be reported as employees of the business. For continuing businesses, the return required on or before March 15 showing the business' preceding year's actual gross receipts and number of employees shall also be used to adjust the estimated return for the same period. Differences will be billed or credited to the business' occupational tax billing as required. Should a business not continue or terminate during the year, such business shall notify the Finance Department's business occupation tax section and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year in establishing the business tax liability.
- (c) If a business is to begin on or after January 1 of the occupation tax year, the tax on such business shall be due and payable on the date of the commencement of the business and shall be based upon estimated gross receipts of the business from the date of commencement until the end of the calendar year. The business shall also file the required registration form and shall pay the administrative fee required by this Article.
- (d) Notwithstanding the foregoing, if a lawyer begins business after January 1 of the occupation tax year, the tax and administrative fee on such business shall be due and payable on December 31 of the year in which the business begins. Any lawyer failing to pay the occupation tax and administrative fee within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on

delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. The general penalty for continuing violations of this Code shall not apply to violations of this chapter by lawyers.

- (e) The City shall not require the payment of more than one (1) occupational tax for each location that a business or practitioner shall have nor shall the City require a business to pay an occupational tax for more than one hundred (100) percent of the business' gross receipts.
- (f) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the City of Dunwoody based upon gross receipts derived from transactions with respect to property located within the City. Payment of the occupation tax shall permit the broker, the broker's affiliated associates and salespersons to engage in all of the brokerage activities described in O.C.G.A. § 43-40-1 without further licensing or taxing other than the state licenses issued pursuant to Chapter 40 of Title 43 of the O.C.G.A.
- (g) For out of state businesses with no location in Georgia, occupation taxes include the gross receipts of business as defined in this Article titled "paying occupation tax of business with no location in Georgia."
- (h) For purposes of this section, prima facie evidence of gross receipts generated during any period shall be a sworn statement under oath and penalty of perjury that the provided gross receipt information is true and correct as stated on the filed Federal Income Tax Return of the business for the applicable year. If no Federal Tax Return has been filed for the applicable year, the applicant must swear under oath and penalty of perjury that no Federal Tax Return has been filed for the applicable year and the gross receipts as presented to the City are true and correct to the best of the applicant's knowledge, ability and training.

Section 5: Administrative and regulatory fees

- (a) A non-prorated, non refundable administrative fee shall be required on all business occupation tax accounts for the initial start up, renewal or reopening of those accounts.
- (b) A regulatory fee will be imposed on those applicable businesses listed under O.C.G.A. § 48-13-9(b) that the City deems necessary to regulate.

Section 6: Renewal returns and applications; due date; penalty for late payment.

- (a) On or before March 15 of each year, businesses liable for occupation taxes levied under this Article for the year shall file with the Finance Department's business occupation tax section, on a form furnished by the Finance Department, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31.
- (b) Occupational taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupational tax due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 15 of each year. Any business failing to pay the occupational taxes and administrative fees within one hundred twenty (120) days after January 1 shall be

subject to and shall pay a ten (10) percent penalty of the amount of tax or fees due and interest as provided by State Law. Such penalty shall be assessed in full on May 1 of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.

- (c) If any person or business whose duty it is to obtain a registration in the City begins to transact or offers to transact any kind of business after said registration or occupation tax becomes delinquent, such offender shall be assessed interest according to the rate as provided by State Law and penalties under the provisions of City code.
- (d) The Finance Department may issue an execution for failure to pay taxes against the person so delinquent and against such person's property for the amount of the occupational tax required to be paid for the purpose of carrying on any of the businesses enumerated in this Article.
- (e) Notwithstanding the foregoing, occupation taxes and administrative fees for lawyers shall be due and payable on December 31 of the year in which the tax is incurred. Any lawyer failing to pay the occupation tax and administrative fees within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. The general penalty for continuing violations of this Code shall not apply to violations of this chapter by lawyers.

Section 7: Paying occupation tax of business with no location in Georgia

Registration and the assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions and occupations with no location or office in the State of Georgia if the business' largest dollar volume of business in Georgia is in the City of Dunwoody, Georgia, and the business or practitioner:

- (1) Has one (1) or more employees or agents who exert substantial efforts within the jurisdiction of the City of Dunwoody, Georgia, for the purpose of soliciting business or serving customers or clients; or
- (2) Owns personal or real property which generates income and which is located within the City of Dunwoody, Georgia.

Section 8: Professional Occupation Tax

- (a) Notwithstanding any other provision of this Article, practitioners of professions as described in O.C.G.A. § 48-13-9(c)(1) through (18) shall elect as their entire occupation tax one (1) of the following:
 - (1) The occupation tax based-on number of employees and gross receipts combined with profitability ratios as set forth in this Article; or

- (2) \$400.00 for the year 2009 and subsequent years, but a practitioner paying according to this shall not be required to provide information relating to the gross receipts of such practitioner.
- (b) Any practitioner whose office is maintained by and who is employed in practice exclusively by instrumentalities of the United States, the State, a municipality or county of the State, shall not be required to register or pay an occupation tax for that practice.

Section 9: Evidence of state registration required if applicable; City and State registration to be displayed

- (a) Each person who is licensed by the Secretary of State pursuant to Title 43 of the Official Code of Georgia Annotated shall provide evidence of proper and current state licensure before the City registration may be issued.
- (b) Each person who is licensed by the State shall post the state license next to the City registration in a conspicuous place in the licensee's place of business and shall keep both the state license and the City registration there at all times while valid.
- (c) Any transient or nonresident person doing business within the City shall carry their occupational tax receipt either upon such person or in any vehicle or other conveyance which is used in such business, and such person shall exhibit it to any authorized enforcement officer of the City when so requested.

Section 10: Change of location

Any person moving from one (1) location to another shall notify the Finance Department of this move and shall submit the new address in writing on a form provided by the Finance Department prior to the day of the moving. A new receipt for the occupational tax will be issued for the new location if the new location conforms to the zoning regulations of the City.

Section 11: Transferability

Occupational receipts shall not be transferable and a transfer of ownership shall be considered in the same light as the termination of the business and the establishment of a new business. Filing a new registration application and payment of applicable fees and taxes shall be required of the new owner of the business.

Section 12: Evidence of qualification required if applicable

Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of City registration, show evidence of such qualification.

Section 13: Inspections of books and records; audits; confidential information

- (a) The Finance Department through its officers, agents, employees or representatives shall have the right to inspect the books or records of any business for which returns have been based upon the number of employees and gross receipts. Upon demand of the Finance

Department, such books or records shall be submitted for inspection by a representative or agent of the City within thirty (30) days. Independent auditors or bookkeepers employed by the City shall be classified as agents for the purposes of this Article. Failure of submission of such books and records within thirty (30) days shall be grounds for revocation of the occupation tax registration currently existing in the City. If it is determined that a deficiency exists as a result of under reporting, additional payment of occupation taxes required to be paid under this Article shall be assessed the interest as provided by State Law and penalties provided for by City code. Notwithstanding the foregoing, no attorney shall be required to disclose any information that would violate the attorney/client privilege.

- (b) Except as provided in paragraph (c) of this section, information provided by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from disclosure under Article 4 of Chapter 18 of Title 50 of the O.C.G.A.
- (c) Information provided to the City by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the governing authority of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.
- (d) Nothing herein shall be construed to prohibit the publication by the City of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

Section 14: Business classifications for determining tax levy

- (a) For the purpose of this Article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business as defined in the Standard Industrial Classification Manual, Office of Management and Budget; and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, Internal Revenue Service. The Finance Department shall review assignment of businesses to profitability classes on a biannual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.
- (b) Classifications by business profitability to be established by the City Council are incorporated herein by reference and adopted for use in the application of this Article. All separate businesses engaged in more than one (1) business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant business activity is legally exempt as defined by this Article shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.
- (c) The occupation tax shall be determined by applying the business' gross receipts and number of employees returned to the City to the business' profitability classification established for each business type. The gross receipts tax shall include a flat rate of \$50.00 for the first \$20,000.00 of gross revenue, and a fee per employee. Gross revenues above \$20,000.00 are taxed using a fee class table based on profitability.

- (d) A copy of business classifications shall be maintained in the office of the City Clerk and shall be available for inspection by all interested persons.

Section 15: Casual and isolated transactions

Nothing in this Article shall be interpreted to require any person who may engage in casual or isolated activity and commercial transactions to register the business and pay occupational tax therefor, where the activity or commercial transactions:

- 1) involve personal assets,
- 2) are not the principal occupation of the individual, and
- 3) gross less than \$12,000 dollars a year.

Street vendor, transient vendor or flea market vendor activities shall not be considered to be casual and isolated business transactions and shall be required to comply with the provisions of this Article.

Section 16: Exemption for disabled veterans, disabled indigent persons, certain organizations

- (a) Persons who qualify for a state veteran's or disabled indigent person's license shall be eligible for exemption from the City occupational tax fee. Any such person claiming an exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the Finance Department.
- (b) Organizations which are exempt from federal income taxation under the United States Internal Revenue Code shall be eligible for exemption from the City occupational tax. Any such organization claiming an exemption shall provide to the Finance Department a federal tax exemption letter showing the code section under which an exemption is claimed. However, with respect to any activity for which an organization otherwise entitled to an exemption under this section shall be liable for federal income tax on unrelated business income or shall be deemed to be a feeder organization under the United States Internal Revenue Code, the exemption from payment of occupational taxes shall not be available.
- (c) Notwithstanding the exemption from payment of City occupation taxes, an exempt person or business under this Section shall comply with the same laws and regulations as are required of other registered businesses.

Section 17: Special classification

- (a) Registration and occupational tax payment is required from any satellite subscription television system. Satellite subscription television system means services provided to subscribers for sale where the provider of the services utilizes a master antenna type system or earth dish system designed to receive and distribute satellite television signals; particularly, a system to provide service to one (1) or more multiple unit dwellings under common ownership wherein any wiring necessary to operate the system does not cross adjacent non owned property lines and does not cross City right-of-way. The provisions of this paragraph shall not apply to any person that is franchised by the City Council to own and operate a cable system.

- (b) Registration and occupational tax payment is required from any broadcast subscription television system. Broadcast subscription television system means services provided to subscribers for sale where the provider of the services transmits premium programming from one (1) or multiple sources by transmitting or retransmitting programs to the public.

Section 18: Denial, revocation or suspension; Appeals

- (a) An occupation tax certificate may be denied, suspended or revoked upon one or more of the following grounds:
 - (1) The applicant or certificate holder is guilty of fraud in the operation of the business or occupation he/she practices or fraud or deceit in being licensed to practice in that area;
 - (2) The applicant or certificate holder is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;
 - (3) The applicant or certificate holder is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent he/she is unable to perform his or her duties under the business or occupation;
 - (4) The applicant or certificate holder is guilty of fraudulent, false, misleading, or deceptive advertising or practices;
 - (5) The applicant or certificate holder has been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in Title 16, Chapter 6 of the Official Code of Georgia Annotated, or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, for a period of five (5) years immediately prior to the filing of the application. If after having been granted a certificate, the applicant pleads guilty, is convicted of, or enters a plea of nolo contendere to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
 - (6) The original application or renewal thereof, contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
 - (7) The business or establishment is not authorized to operate within the City of Dunwoody, or within the zoning district within which it is located, or is otherwise not in conformity with locational requirements of any of the City's ordinances.
 - (8) The business or establishment is a threat or nuisance to public health, safety or welfare;
 - (9) The business or establishment has been found by a court of law to have been operating unlawfully;

- (10) Any other violation of this Article; or
- (11) Violation of another statute, ordinance, rule, or regulation that governs the operation of the business in question.
- (b) Within forty-five (45) days of the filing of a completed application, the Finance Department shall either issue an occupation tax certificate to the applicant or issue a written notice of intent to deny an occupation tax certificate for one or more reasons set forth in subsection (a)(1)-(a)(11) above.
- (c) The Tax Collector shall administer and enforce the provisions of this Article. Should an aggrieved person or entity desire to appeal a decision under this Article, the following procedure shall apply: a notice of appeal must be filed with the Director of Finance within fifteen (15) calendar days after receipt of the decision. The notice of appeal shall be in the form of a letter, and shall clearly identify all of the objections or exceptions taken to the decision of the Finance Director. The notice of appeal shall also contain an address for receipt of future notices. Should the aggrieved person or entity fail to file a notice of appeal within the time allowed, the right to appeal is lost.
- (d) Upon receipt of a timely and proper notice of appeal, the Director of Finance shall notify the appellant, in writing, of the date, time and place where a hearing will be held. The notice shall specify the time, place and date, not less than ten (10) days nor more than thirty (30) days after the date the notice is issued, on which the Mayor and City Council, or such hearing officer or board as the Mayor and Council may designate, shall conduct a hearing on Tax Collector's written notice of intent to deny, suspend, or revoke the occupation tax certificate. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any adverse witnesses. The Tax Collector shall also be represented by counsel, and shall bear the burden of proving by a preponderance of the evidence the grounds for denying, suspending, or revoking the occupation tax certificate.
- (e) The hearing shall take no longer than two (2) days, unless continued or extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Mayor and City Council, or such hearing officer or board as the Mayor and Council may designate, shall issue a written decision, including specific reasons for the decision pursuant to this Article, to the respondent within five (5) days after the hearing. If the decision is to deny, suspend, or revoke an occupation tax certificate, the decision shall become final unless the applicant or certificate holder files an appeal by petition for writ of certiorari to the Superior Court of DeKalb County within thirty (30) days of the date of the decision. If the decision concludes that no grounds exist for denial, suspension, or revocation of the occupation tax certificate, the City Tax Collector shall, within three (3) business days of the issuance of the decision, issue the occupation tax certificate to the applicant.
- (f) This section shall not apply to attorneys in the practice of law.

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Section 19: Proration of Fee

No license fee shall be prorated.

Section 20: Promulgation of rules and regulations

The Finance Department shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this Article or other laws of the City and the State, or the constitution of this State or the constitution of the United States, for the administration and enforcement of the provisions of this Article and the collection of the occupational tax.

Section 21: Intent of Article

It is the intent of the Article to impose the taxes set forth in this Article upon all businesses and practitioners operating in the City of Dunwoody consistent with the requirements of the Constitution and laws of the State of Georgia. In the event that the fees imposed hereby shall not be authorized on any business and practitioner or taxes and fees shall be in excess of the maximum amount authorized by law, such taxes and fees shall be imposed only to the extent authorized by law.

Section 22: Severability

The invalidity of any part of this Article shall not affect the validity of the remaining portions hereof. In the event that this Article may not be enforced against any class of business mentioned herein, such inability to enforce the same shall not affect its validity against other businesses specified herein.

Section 23: Amendment of Article

This Article may be amended so as to increase the occupation tax on any business or practitioner only after the conduct of at least one public hearing pertaining thereto.

Section 24: Effective Date

- (a) This Article shall become effective upon adoption.
- (b) Annual registration and payment shall be conducted in accordance with the terms of this Article.

Section 25: Repealer, Exceptions

All ordinances providing for occupation taxes and administrative fees in conflict with this Article are hereby repealed, provided, however, that nothing herein shall affect any ordinance providing for regulation of taxicabs or shall affect any resolution providing for the regulation of the sale of any alcoholic beverages and taxes imposed thereon, or any mixed drink tax or any hotel-motel tax, such taxes being due and payable in addition to the taxes and fees imposed hereby.

Article 2: Pawn Shops, Pawn Brokers

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Section 1: Applicability of article provisions.

- (a) Except as provided in subsection (b), every person, whether a licensed junk dealer or pawnbroker, or any other secondhand dealer, who, exclusively or as incidental to or in connection with other business, purchases, sells or acquires in trade used or secondhand jewelry, flat silver, gold, and silver objects of every kind and description, including watches and clocks, any of which is made in whole or in part of gold, silver, platinum, or other precious metals; coins; diamonds, emeralds, rubies, or other precious stones; pistols or guns; musical instruments, bicycles or accessories shall, for the purpose of this Article, be a secondhand dealer. Any person who shall purchase any Article of the kinds herein described from any person other than a bona fide dealer in those Articles shall, for the purpose of making the reports required herein, also be a secondhand dealer and subject to all the provisions of this Article relating to those records and reports.
- (b) Notwithstanding subsection (a), a secondhand dealer shall not include persons who:
 - (1) exclusively operate on a consignment basis; or
 - (2) ninety percent (90%) of gross receipts does not consist of the sale of jewelry, flat silver, gold, or silver objects of every kind and description, including watches and clocks, any of which is made in whole or in part of gold, silver, platinum, or other precious metals; coins; diamonds, emeralds, rubies, or other precious stones; pistols or guns; musical instruments, bicycles or accessories.

Section 2: Recordkeeping.

- (a) *Contents of record book.* All secondhand dealers shall keep a book wherein shall be entered an accurate description of all property of the kinds specified in Section 1 of this Article which they acquire by purchase of trade, and the name, address, estimated age, weight, and height of the person from whom purchased or acquired and the date and hour of the purchase. These entries shall be made as soon as possible after the transaction is had, but in no case more than one (1) hour thereafter.
- (b) *Inspection.* This record shall at all times be subject to inspection and examination by the Police Department.

Section 3: Entries in Record Book to be Numbered Serially; Property to be Tagged with Corresponding Number.

Every entry required to be made in the secondhand dealer's book required by Section 2 of this Article shall be numbered serially, and the property described in the entry shall have attached to it a tag bearing the same serial number.

Section 4: Acquiring Articles With Serial Number Mutilated or Altered.

It shall be unlawful for any secondhand dealer to purchase or acquire in trade any watch, clock, pistol, gun, automobile tire, or battery, or any other Article commonly branded with a serial number, upon which the number has been mutilated or altered.

Section 5: Daily Reports to Police; Form and Contents.

Every secondhand dealer identified in Section 1 of this Article shall make a daily report in writing to the Chief of Police in such form as may be prescribed by him, of all property purchased or acquired by him during the twenty-four (24) hours ending at 12:00 midnight on the date of the report.

Section 6: Examination and Inspection of Articles by Police; Segregation of Suspicious Articles.

All property purchased or acquired by a secondhand dealer shall at all times be subject to examination and inspection by the Police Department. If, upon the inspection, a police officer shall have reasonable cause to believe that any of the property is stolen, he shall segregate it. It shall thereafter be unlawful for the person in possession of the property to dispose of it, or in any manner mutilate, melt, or disfigure it, until fifteen (15) days have elapsed from the date of the inspection.

Section 7: Property Not to be Disposed of for Fifteen (15) Days After Acquisition.

All property purchased or acquired by a secondhand dealer shall be held for not less than fifteen (15) days.

Section 8: Dealing with Minors.

It shall be unlawful for any secondhand dealer, or any person excluded from being a considered a secondhand dealer by Section 1(b), to buy or receive any property of the kinds described in Section 1 of this Article from any person under the age of eighteen (18) years..

Article 3: Door to Door Salesmen

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Section 1: Definitions.

For the purpose of this Chapter, the following words as used herein shall be considered to have the meaning herein ascribed thereto:

- (a) “*Soliciting*” shall mean and include any one or more of the following activities:
 - (i) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; or
 - (ii) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or publication; or
 - (iii) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.
- (b) “*Residence*” shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.
- (c) “*Licensed solicitor*” shall mean and include any person who has obtained a valid permit as hereinafter provided, which permit is in the possession of the solicitor on his or her person while engaged in soliciting.

Section 2: Permit Required.

- (a) It shall be unlawful for any person, firm or corporation to engage in the business of soliciting, calling on residences door-to-door without first having obtained a permit in accordance with the provisions contained in this Chapter.
- (b) The requirement of Subsection (a) above is meant to apply to door-to-door solicitations for commercial transactions for profit only.
 - (i) It is not meant to regulate solicitation for charitable, political, or other nonprofit purposes provided that all sales proceeds are the property of and used by the nonprofit organization.
 - (ii) It does not apply to officers or employees of the city, county, state, or federal governments, or any subdivision thereof, when on official business.
- (c) Each person shall at all times while soliciting in the City of Dunwoody carry upon his or her person the permit so issued and the same shall be exhibited by such solicitor whenever he is requested to do so by any police officer or by any person solicited.
- (d) Each permit issued shall contain the name of the solicitor, the name and address of the person, firm or corporation or association whom the solicitor is employed by or represents, a photograph of the solicitor, and physical description. Such photograph shall be provided by the solicitor and shall be at least two (2) inches by two (2) inches in size.
- (e) The permit shall state the expiration date thereof. In no event shall a permit be valid for more than six (6) months.

Section 3: Permit Applications.

- (a) Application for a permit shall be made upon a form provided by the City. The City shall have applications available on request. The applicant shall truthfully state in full the information requested on the application, to wit:
 - (i) Name and address of present place of residence and length of residence at such address; also business address if other than present address;
 - (ii) Address of place of residence during the past three (3) years if other than present address;
 - (iii) Age of applicant;
 - (iv) Physical description of the applicant;
 - (v) Name and address of the person, firm, or corporation or association whom the applicant is employed by or represents; and the length of time of such employment or representation;

- (vi) Name and address of employer during the past three (3) years if other than the present employer;
 - (vii) Description sufficient for identification of the subject matter of the soliciting in which the applicant will engage;
 - (viii) Period of time for which the certificate is applied;
 - (ix) Proposed route, including streets to be included on each day, which applicant intends to follow;
 - (x) The date, or approximate date, of the latest previous application for permit under this Chapter, if any;
 - (xi) Whether the applicant has ever been convicted of a felony, a crime of moral turpitude, or any other violation of any state or federal law;
 - (xii) Names of magazines, books, or journals to be sold;
 - (xiii) Names of the three (3) most recent communities where the applicant has solicited house to house;
 - (xiv) Proposed method of operation;
 - (xv) Description and license plate number of vehicle(s) intended to be operated by applicant;
 - (xvi) Signature of applicant; and
 - (xvii) Social security number of applicant.
- (b) All statements made by the applicant upon the application or in connection therewith shall be under oath.
- (c) The applicant shall submit to fingerprinting and background investigation by the City Public Safety Department in connection with the application for the permit.
- (d) The City Manager shall cause to be kept in his/her office or designee office an accurate record of every application received and acted upon together with all other information and data pertaining thereto and all permits issued under the provisions of this Chapter, and of the denial of applications. Applications for permits shall be numbered in consecutive order as filed, and every permit issued shall be identified with the duplicate number of the application upon which it was issued.
- (e) No permit shall be issued to any person who has been convicted of a felony or crime of moral turpitude within five (5) years of the date of the application; nor to any person who

has been convicted of a violation of any of the provisions of this Chapter; nor to any person whose permit issued hereunder has previously been revoked as herein provided.

- (f) The fee for a permit shall be valid for a six (6) month period.

Section 4: Permit Revocation

- (a) Any permit issued hereunder shall be revoked by the City Manager if the holder of the permit is convicted of a violation of any of the provisions of this Chapter or has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a permit under the terms of this Chapter.
- (b) Immediately upon such revocation, written notice thereof shall be given to the holder of the permit in person or by certified United States mail addressed to his or her residence address set forth in the application.
- (c) Immediately upon the giving of such notice the permit shall become null and void and must be turned in to the City Manager's office.

Section 5: Routes.

To the extent practical, each solicitor shall identify the streets and routes which he will follow on each day he is engaged in the business of soliciting. If changes in routes are made, then such changes must be immediately reported to the City Manager's office.

Section 6: Prohibitions

- (a) Any licensed solicitor who shall be guilty of any fraud, cheating, or misrepresentation, whether himself or through an employee, while acting as a solicitor in the City, shall be deemed guilty of a violation of this Chapter.
- (b) It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined if the occupant of said residence has made it clear, by written sign or otherwise, that solicitors are not invited.
- (c) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.
- (d) Times Allowed.
 - (i) It is hereby declared to be unlawful and shall constitute a nuisance for any person, whether licensed under this Chapter or not, to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention

of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined, prior to 10:00 a.m. or after 6:30 p.m., Eastern Standard Time, or before 10:00 a.m. or after 7:00 p.m. Eastern Daylight Saving Time, Monday through Saturday, or at any time on Sunday, or on a state or national holiday.

- (ii) Solicitations for political purposes shall not occur prior to 10:00 a.m. or after 7:00 p.m., Eastern Standard Time, or before 10:00 a.m. or after 7:00 p.m. Eastern Daylight Saving Time.

Section 7: Penalties.

Any person violating any of the provisions of this Chapter shall, upon conviction thereof, be subject to a fine not to exceed the maximum fine allowed by state law for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Article 4: Panhandling

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Section 1: Definitions

As used in this Article:

- (a) “*Solicit*” shall mean to request an immediate donation of money or other thing of value from another person, regardless of the solicitor’s purpose or intended use of the money or other thing of value, including employment, business or contributions or to request the sale of goods or services. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.
- (b) “*Public area*” shall mean an area to which the public or a substantial group of persons has access, including but not limited to alleys, bridges, buildings, driveways, parking lots, parks, play grounds, plazas, sidewalks, and streets that are open to the general public.
- (c) “*Aggressive Panhandling*” shall mean and include:
 - (i) Intentionally or recklessly making any physical contact with or touching another person or his vehicle in the course of the solicitation without the person’s consent;
 - (ii) Following the person being solicited, if that conduct is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person’s possession, or is intended to, or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
 - (iii) Continuing to solicit within five (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is intended to or is likely

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to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or is intended to, or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

- (iv) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest, and acts authorized by a permit issued pursuant to Article 4, Section 3 of this Chapter shall not constitute obstruction of pedestrian or vehicular traffic;
- (v) Intentionally or recklessly using obscene or abusive language or gestures intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or words intended to, or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (vi) Approaching the person being solicited in a manner that is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or is intended to, or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

Section 2: Prohibitions.

- (a) It shall be unlawful for any person, firm, organization, or corporation to aggressively panhandle or solicit funds for the sole benefit of the solicitor within any public area in the City of Dunwoody, or:
 - (i) In any public transportation vehicle, or public transportation station or stop;
 - (ii) Within fifteen (15) feet of any entrance or exit of any bank or check cashing business or within fifteen (15) feet of any automated teller machine during the hours of operation of such bank, automated teller machine or check cashing business without the consent of the owner or other person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
 - (iii) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property; or
 - (iv) From any operator of a motor vehicle that is in traffic on a public street, whether in exchange for cleaning the vehicle's windows, or for blocking, occupying, or reserving a public parking space; provided, however, that this paragraph shall not apply to

services rendered in connection with emergency repairs requested by the operator or passengers of such vehicle.

- (b) Unauthorized solicitation shall constitute an ordinance violation.
- (c) Aggressive panhandling shall constitute an aggravated ordinance violation.

Section 3: Applicability

This Chapter regulates the time, place and manner of solicitations and shall not apply to any persons exercising their clearly established constitutional right to picket, protest or engage in other constitutionally protected activity.

Article 5: Taxicabs

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Section 1: Operation of taxicab to be in compliance with Article.

No person, firm, or corporation shall operate a taxicab in the City except in accordance with the terms and provisions of this Article.

Section 2: Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- (a) “*Operator*” means any person, firm, or corporation in the business of transporting passengers in taxicabs.
- (b) “*Taxicab*” means any passenger-carrying vehicle used in the business of transporting passengers for hire which does not have fixed termini, including but not limited to, any unmarked automobiles used in the business of transporting passengers for hire by contract or requested special services that do not have fixed termini.
- (c) “*Taximeter*” means a device that automatically calculates, at a predetermined rate, and indicates the charge for hire of a vehicle. Taxicabs operating with non-electronic taximeters shall be furnished with a sign, approved by the City of Dunwoody Code Enforcement, immediately adjacent to the taximeter which explains the way the fare shall be calculated if the taximeter reaches its highest fare before the passenger’s destination is reached. This sign shall be pointed out to the passenger by the driver at the beginning of the trip.
- (d) “*Line Jumping*” Taxicabs shall be placed on stands only from the rear and shall be moved forward and to the front of the stand immediately as space becomes available by the departure or movement of preceding taxicabs. Violation of this rule constitutes line jumping and shall be grounds for suspension of a taxi driver’s permit.

Section 3: Operations deemed to be doing business in the City.

A taxicab shall be deemed to be doing business in the City when its original terminus, that is to say, the place from which it operated and is subject to calls, shall be located in the City.

Section 4: License fees for annual operation and driver's permit.

License fees are hereby levied per annum for each taxicab maintained or operated, and per annum for each driver's permit. The license fees are established from time to time by Resolution of the Mayor and City Council. The business occupation tax shall be in accordance with the current business occupation tax ordinance. The following criteria must be met to maintain a taxi cab license:

1. Establishment and maintenance of an office in a commercially zoned area of the corporate boundaries of the City of Dunwoody.
2. Submission of a copy of current lease or proof of ownership of office space.
3. Establishment and maintenance of a publicly listed telephone number.
4. Maintain the name and home address of each driver affiliated with the company.
5. Maintain off-street parking lot capable of accommodating all company vehicles.
6. Maintain a file for each vehicle containing proof of current instruments.
7. Possess a valid six (6) month auto insurance policy.

Section 5: Permits for operation.

- (a) *Required.* No person, firm, or corporation shall operate a taxicab or conduct the business of operating taxicabs in the City of Dunwoody until the person, firm, or corporation has first applied for and obtained an occupation tax certificate and a taxicab license. The applications for the occupation tax certificate and license shall be made to the City of Dunwoody upon forms provided for that purpose. The license for vehicles shall be issued by the City of Dunwoody. Permits for drivers will be issued by the City of Dunwoody Police Department, or its designee.

No person shall operate a taxicab in the corporate boundaries of the City of Dunwoody until the person has first applied for and obtained a driver's permit. Permits for drivers will be issued by the City of Dunwoody Police Department, or its designee.

- (b) *Description of business.* The application shall contain, among other things, a detailed description of the equipment to be used in the business and the name of the operators thereof, the point of original terminus of the business, and the address and telephone number of the office or call station from which the business is operated.
- (c) *Indemnity insurance.* No taxicab license to operate taxicabs shall be issued or continued in operation unless the holder thereof shall file with the business tax division a policy of indemnity insurance in some indemnity insurance company authorized to do business in this state, which policy shall have limits equal to or in excess of the following sums for each taxicab operated:

- (i) For bodily injury to each person, fifty thousand dollars (\$50,000.00);
- (ii) For bodily injury to all persons sustained in any one accident, fifty thousand dollars (\$50,000.00); and
- (iii) For property damage and liability for baggage of passengers, twenty-five thousand dollars (\$25,000.00).

The policy shall be conditioned to protect the public against injury or damage proximately caused by the negligence of the holder of such permit. Additional drivers or new drivers hired after issuance of the occupation tax certificate shall be covered by a rider to the policy prior to the issuance of a driver's permit.

- (d) *Ages of Vehicles.* The operator is responsible for ensuring that each taxicab used in active business is no more than six (6) years old. By December of each year, automobiles of a model year seven (7) years prior to that year must be replaced.
- (e) *Annual renewal.* All fees for taxicab licenses and taxi drivers' permits are due no later than June 30 of each year.

Section 6: Certificate of inspection.

- (a) A certificate of inspection completed on forms provided by the City of Dunwoody and issued by an ASE Certified mechanic shall be located inside the taxicab at all times certifying that the taxicab and equipment therein are safe and in compliance with applicable law. This certificate must be renewed every ninety (90) days, and the operator of any taxicab business shall be required to keep his/her taxicab and equipment therein in safe condition conforming to all laws under penalty of having his/her permit to conduct a taxicab business suspended or revoked.
- (b) Each taxicab must produce proof of taximeter inspection and calibration for issuance and renewal of taxi decal.
- (c) The City of Dunwoody Police Department, or its designee, may conduct random inspections to ensure the safety and welfare of the public.

Section 7: Additional Equipment.

The operator of a taxi business shall register with the City of Dunwoody each additional piece of equipment put in use, and same shall be subject to inspection and registration as herein provided.

Section 8: Drivers; Qualifications.

It shall be the duty of all operators to file with the City of Dunwoody the names and addresses, age and physical description of the persons employed as drivers. All drivers shall hold licenses from the State Department of Public Safety as drivers of vehicles for hire, and drivers' permits issued by the City Police Department. No person shall be employed or shall drive a taxicab who has, within the

past five (5) years, been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in Title 16, Chapter 6 of the Official Code of Georgia Annotated, or to the offense of driving under the influence of drugs and/or alcohol, or to any open container violations, or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, violence, or the violation of a spirituous, vinous, or malt beverage statute or if the driver has been convicted of an offense of causing death by vehicle. No driver can be issued a taxi driver's permit if the driver has received three (3) or more moving violations in the preceding twelve (12) month period.

Section 9: Taxi Stands; Parking.

Operators and drivers of taxicabs shall not park taxicabs in any congested area as defined by the regulations of the City Council at any place other than the place or places designated as "taxi stand". The parking of taxicabs shall be subject at all times to the direction of police officers should such direction be necessary or desirable for the relief of an emergency traffic condition.

Section 10: Information to be displayed.

- (a) Information to be displayed inside the taxicab at all times:

The operator is responsible for ensuring that each taxicab used in active business shall have posted in a conspicuous place, on the inside thereof, a map or street guide of the City of Dunwoody, the name and photograph of the driver of the taxicab, and a schedule of fares. Each taxicab used in active business shall also bear on the outside thereof a numbered decal to be furnished by the City of Dunwoody.

- (b) Information to be displayed outside the taxicab at all times:

The operator is responsible for ensuring that each taxicab used in active business bears on the outside thereof a numbered decal to be furnished by the City, the name of the company and business telephone number which must be permanently affixed to the taxicab, a dome light on the roof which must be at least six (6) inches in height permanently affixed to the roof and bear the term "taxi" or the company name.

Section 11: Operators responsible for violations by drivers.

To the extent provided by law, operators are responsible for violations of this Article by their taxicab drivers whether such drivers are direct employees or independent contractors.

Section 12: Notice of denial of license.

In the event that an application is denied, the City of Dunwoody shall provide the applicant with written notice of the denial of the taxicab license. The notice of denial shall include the grounds for denial.

Section 13: Suspension or revocation of license.

- (a) No license issued hereunder may be transferred.

- (b) Each license granted hereunder shall be subject to suspension or revocation for violation of any rule or regulation of the City now in force or hereafter adopted.
- (c) Whenever the City Manager determines there is cause to suspend or revoke the license issued hereunder, the City Manager's Office shall give the licensee ten (10) day written notice of intention to suspend or revoke the license. A hearing will be scheduled wherein the licensee may present a defense to the suspension or revocation before the City Council or such board as the City Council may designate. The ten (10) day written notice shall include the time, place, and purpose of such hearing, and a statement of the charges upon which such hearing will be held. After the hearing, the Council or designated Board may suspend or revoke the license issued hereunder if any of the grounds set forth below exist. A license issued under this Article may be suspended or revoked by the City Council or their designee and a driver's permit may be suspended or revoked by the City of Dunwoody Police Department upon one or more of the following grounds:
 - (i) The original application contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
 - (ii) For failure to pay all fees, taxes or other charges imposed by the provisions of this Article;
 - (iii) For failure to maintain all of the general qualifications applicable to the initial issuance of a license or permit under this Article;
 - (iv) Having four or more moving traffic violations in any twelve (12) month period;
 - (v) Refusing to accept a client solely on the basis of race, color, national origin, religious belief, or sex. Operators and drivers shall not refuse to accept a client unless the client is obviously intoxicated or dangerous;
 - (vi) Allowing the required insurance coverage to lapse or allowing a driver to operate in the City in violation of the provisions of this Article;
 - (vii) The establishment or driver is a threat or nuisance to public health, safety or welfare;
 - (viii) Not taking the most direct route; or
 - (ix) For violation of any part of this Article.
- (d) After the City Manager makes a recommendation to the Mayor and City Council to suspend or revoke a license issued hereunder, the Mayor and City Council, or such board as the Mayor and City Council may designate, will conduct a hearing to hear evidence relevant to the alleged violation.

- (i) At the hearing, the City Manager or his designate proceeds first and shall have ten (10) minutes to present all evidence and argument in support of the recommendation to suspend or revoke the license issued hereunder.
- (ii) The Mayor and the City Council members or their designates will have the right to ask questions at any time.
- (iii) After the City Manager makes his presentation, the licensee or the licensee's legal counsel, shall have ten (10) minutes to present evidence and argument as to why the license issued hereunder should not be suspended or revoked. The Mayor and City Council members or their designate will have the right to ask questions at any time.
- (iv) After hearing all of the evidence and arguments of the parties, the Mayor and City Council will render a decision. The suspension or revocation of a taxicab license is final unless the licensee files a petition for writ of certiorari to the Superior Court of Dekalb County within thirty (30) days of the date of the decision.

Section 14: No proration of license fee.

No license fees shall be prorated. Taxi driver's permit fees shall not be prorated.

Section 15: Repealer; exceptions.

All resolutions providing for taxicab license fees and drivers permits in conflict with this Article are hereby repealed, provided, however, that nothing herein shall affect any resolution providing for occupation or business taxes.

Section 16: Intent of Article; severability.

It is the intent of this Article to regulate the operation of taxicab businesses as set forth in this Article upon all businesses operating in the corporate boundaries of the City of Dunwoody consistent with the requirements of the Constitution and laws of the State of Georgia. In the event that the regulations and/or fees imposed hereby shall not be authorized on any business and practitioner or regulation and/or fee shall be in excess of the maximum amount authorized by law, such regulation and/or fee shall be imposed only to the extent authorized by law. The invalidity of any part of this Article shall not affect the validity of the remaining portion hereof. In the event that this Article may not be enforced against any class of business mentioned herein, such inability to enforce the same shall not affect its validity against the other business specified herein.

Section 17: Effective date.

This Article shall become effective immediately upon its adoption by Mayor and City Council. Annual registration and payment shall be conducted in accordance with the terms of this Article.

Article 6: Professional Bondsmen

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Section 1: Definition – Professional Bondsman.

Professional Bondsman means all persons who hold themselves out as signers or sureties of bail bonds for compensation, and who are licensed as provided in this Article.

Section 2: Compliance.

All professional bondsmen licensed through the City of Dunwoody must comply with the requirements of O.C.G.A. §17-6-50 and all related and pertinent sections of the Official Code of Georgia Annotated at all times when acting as bonding agents in the City of Dunwoody.

Section 3: Surety Requirement.

Prior to the issuance of a license, professional bondsmen shall post a surety or property bond with the City Clerk in an amount of at least \$50,000.00, and such bond shall be kept current at all times; or the professional bondsman may sign an agreement with the City providing for an escrow account in a financial institution designated as a city depository. Any such escrow account shall be not less than \$5000.00, and shall be 10% of that company's capacity for posting bonds. Upon acceptance of either the surety bond or the escrow account and payment of the administrative fee set forth from time to time by the City Council, the City shall issue a business license to the bonding company.

Section 4: Nonappearance of principal.

In the event of the nonappearance of the principal in the Municipal Court on the appointed date and time, the judge shall at the end of the court day, forfeit the bond and order an execution hearing. Procedures for forfeiture of bonds and judgment absolute set forth in O.C.G.A. §§17-6-70 through 17-6-72 shall be followed. In addition to the penalties set forth in State law, if the judgment absolute is entered, and payment is not made promptly to the City, the license of the bail bondsman shall be suspended until such time as the judgment absolute is satisfied, or the defendant is returned to the custody of the court.

Section 5: Cancellation of Bond.

When the condition of the bond is satisfied or the forfeiture of the bond has been discharged or remitted, the judge shall make an order canceling the bond. Conviction or acquittal of the defendant shall satisfy the terms of the bond written by a bail bondsman.

Section 6: Suspension of bail bond license.

The City may deny, suspend, revoke or refuse to renew any bail bondsman's business license for any of the following causes:

- (i) For any violation of State statutes or City code.
- (ii) Material misstatement, misrepresentation or fraud in obtaining the license.
- (iii) Misappropriation, conversion or unlawful withholding of money belonging to others and received in the conduct of business under this license.
- (iv) Fraudulent or dishonest practices in the conduct of business under this license.
- (v) Failure to comply with the provisions of this Article.
- (vi) Failure to return collateral security to the principal who is entitled thereto.
- (vii) Failure to meet the obligations or standards set forth by the State of Georgia or the City of Dunwoody.

Section 7: Return of license.

Any professional bondsman who discontinues writing bail bonds during the period for which he/she is licensed shall notify the City Clerk and immediately return his/her license certificate.

Section 8: Monthly reporting.

All bondsmen licensed to do business in the City of Dunwoody shall provide the City Clerk with a list of all outstanding bonds posted with the City on a monthly basis.

Section 9: Effective Date.

This ordinance shall become effective upon signing.

Article 7: Escort Services

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Section 1: Intent of Article

It is the intent of this Article to regulate the operation of escort and/or dating services operating for profit in the City consistent with the requirements of the Constitution and laws of the State of Georgia.

Section 2: Compliance

No person shall conduct the business for profit of an escort and/or dating service in the City without first meeting the requirements of this Article.

Section 3: Copy of Article

Upon request, the City Manager or designee shall provide each applicant hereunder with a copy of this Article.

Section 4: Information Concerning Employees to be filed with the City Manager; Background Investigation Required

- (a) All licensees under this Article must file with the City Manager or designee their home address, home telephone number, and place of employment. Changes thereto shall be filed with the City Manager or designee within ten (10) days from the date the change becomes effective.
- (b) All employees of the licensee must submit to a background investigation not less than fifteen (15) days prior to commencing work to allow for the investigation of the employee. The City Manager or designee shall provide the release form used to conduct the background investigation. After the release has been signed, the City Police Department shall investigate the police record of the employee.

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Section 5: Records of Clients

- (a) It shall be the duty of the licensee to maintain correct and accurate records of the name and address of the persons receiving escort and/or dating services and to provide the name of the employee providing such service. Records shall be kept for a minimum of three years.

These records shall be subject to inspection at any time by the City Manager or designee and the City Police Department.

- (b) Failure to maintain records as required in this Section is a violation of this Article.

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Section 6: License Required; Application; Information to be given

- (a) Any person desiring to engage in the business, trade or profession of providing and/or arranging dates, escorts, or partners for persons shall, before engaging in such business, trade or profession, file an application with the City Manager or designee and obtain a license. This application shall be typewritten or legibly handwritten and shall contain the following as appendices:

- (1) Name, home and business address of the applicant, date of birth, and sex.
- (2) The applicant and employees must submit to a background investigation. The City Manager or designee shall provide the release form used to conduct the background investigation. After the release form has been signed and witnessed, the City Police Department shall investigate the police record of the employee. The release form must be signed at least fifteen (15) days prior to the issuance of a license to allow for the investigation of the applicant, and for the employee, at least fifteen (15) days prior to the commencement of work to allow for the investigation of the employee.
- (3) The applicant must furnish a list of at least three character witnesses by name, address, and telephone number.
- (4) Applicants shall furnish the name and address of any person having previously employed the applicant (in whatever position) for the last two years, if applicable.
- (5) Applicants shall provide two recent identical photographs to the City Manager or designee. The photographs must have been taken within the past six (6) months and be a good likeness of the applicant. The photographs must be clear with a full front view of the applicant's face. Photographs may be in color or black and white and the size must be two inches by two inches (2" x 2"). The photograph must be taken without head covering unless a signed statement is submitted indicating that the head covering is worn daily for religious or medical reasons. Dark glasses may not be worn in the photographs unless a doctor's statement is submitted supporting the wearing of dark glasses for medical reasons. The City Manager or designee shall permanently affix one photograph to the permit.

- (b) The City Police department shall be notified within ten (10) days of any change of ownership and/or partners or employees.

- (c) A corporation, partnership, or other business entity being established for the purpose of engaging in the business, trade or profession of providing and/or arranging dates, escorts, or partners for persons, must also obtain a license.

Section 7: Qualifications of Applicant

No occupation tax certificate or license shall be granted pursuant to this Article to any person less than 18 years of age or any person who has been convicted, pled guilty or entered a plea of nolo contendere under any Federal, State or local law of any crime involving moral turpitude, illegal gambling, any felony, criminal trespass, public indecency, misdemeanor involving any type of sexual related crime, any theft or violence against person or property, any crime of possession, sale, or distribution of illegal drugs, distribution of material depicting nudity or sexual conduct as defined under State law, criminal solicitation to commit any of these listed offenses, attempts to commit any of these listed offenses, for a period of ten (10) years prior to the date of application for such certificate and has been released from parole or probation.

Section 8: Fees

License fees and the background investigation fee shall be as established by the City Council. No license can be issued by the City Manager or designee until the applicant satisfies the qualifications listed in this article and pays all license fees.

Section 9: Unlawful or Prohibited Activities

No person less than 18 years of age shall be employed by an escort and/or dating service in any capacity.

Section 10: Notice of Denial of License

The City Manager or designee shall provide the applicant with written notice of the denial of the escort and/or dating service license. The notice of denial shall include the grounds for denial.

Section 11: Suspension or Revocation of License

- (a) No license issued hereunder may be transferred.
- (b) Each license granted hereunder shall be subject to suspension or revocation for violation of any rule or regulation of the City now in force or hereafter adopted.
- (c) Whenever the City Manager or designee determines there is cause to suspend or revoke the license issued hereunder, the City Manager or designee must give the licensee a ten (10) day written notice of intention to suspend or revoke the license. A hearing will be scheduled wherein the licensee may present a defense to the suspension or revocation before the Mayor and City Council or such board as the Mayor and City Council may designate. The ten-day written notice must include the time, place, and purpose of such hearing, and a statement of the charges upon which such hearing shall be held. After the hearing, the board may suspend or revoke the license issued hereunder for any of the grounds set forth in this subsection. A license may be suspended or revoked upon one or more of the following grounds:
 - (1) The licensee is engaged in the escort and/or dating service under a false or assumed name, or is impersonating another practitioner of a like or different name;

- (2) The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent as to incapacitate such person to the extent that he is unable to perform his duties;
 - (3) The licensee is guilty of fraudulent, false, misleading, or deceptive advertising or practices;
 - (4) The licensee has been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in O.C.G.A. §§ 16-6-1--16-6-25, or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, for a period of five (5) years immediately prior to the filing of the application. If, after having been granted a license, the licensee is found not to be of good moral character, or pleads guilty or enters a plea of nolo contendere to any of the above offenses, said license shall be subject to suspension and/or revocation;
 - (5) The application contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
 - (6) The licensee fails to pay all fees, taxes or other charges imposed by the provisions of this Article;
 - (7) The licensee fails to maintain all of the general qualifications applicable to initial issuance of a license under this Article;
 - (8) The establishment is a threat or nuisance to public health, safety or welfare; or
 - (9) Any other violation of this Article.
- (d) After the City Manager or designee makes a recommendation to the City Council to suspend or revoke a license issued hereunder, the City Council, or such board as it may designate, will conduct a hearing to hear evidence relevant to the alleged violation.
- (1) At the hearing, the City Manager or his designee proceeds first and presents all evidence and argument in support of the recommendation to suspend or revoke the license issued hereunder.
 - (2) After the City Manager or his/her designee makes his presentation, the licensee or the licensee's legal counsel, will present evidence and argument as to why the license issued hereunder should not be suspended or revoked. The City Council or its designee will have the right to ask questions at any time.
 - (3) After hearing all of the evidence and arguments of the parties, the City Council will render a decision. The suspension or revocation of an escort or dating service license is final.

Section 12: Proration of License Fee

No license fees established in this Article shall be prorated.

Article 10: Sexually Oriented Businesses

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Section 1: Rationale and findings.

- (a) Purpose. It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

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- (b) Rationale and Findings. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and

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Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007); *Artistic Entertainment, Inc. v. City of Warner Robins*, 331 F.3d 1196 (11th Cir. 2003); *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Williams v. Pryor*, 240 F.3d 944 (11th Cir. 2001); *Williams v. A.G. of Alabama*, 378 F.3d 1232 (11th Cir. 2004); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002); *Ward v. County of Orange*, 217 F.3d 1350 (11th Cir. 2002); *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251 (11th Cir. 1999); *David Vincent, Inc. v. Broward County*, 200 F.3d 1325 (11th Cir. 2000); *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *This That And The Other Gift and Tobacco, Inc. v. Cobb County*, 285 F.3d 1319 (11th Cir. 2002); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Grand Faloan Tavern, Inc. v. Wicker*, 670 F.2d 943 (11th Cir. 1982); *International Food & Beverage Systems v. Ft. Lauderdale*, 794 F.2d 1520 (11th Cir. 1986); *5634 E. Hillsborough Ave., Inc. v. Hillsborough County*, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), *aff'd*, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (per curiam); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *He&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *High Five Investments, LLC v. Floyd County*, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008); *People ex rel.*

Deters v. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); and

Fairfax MK, Inc. v. City of Clarkston, 274 Ga. 520 (2001); *Morrison v. State*, 272 Ga. 129 (2000); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); *Flippen Alliance for Community Empowerment, Inc. v. Brannan*, 601 S.E.2d 106 (Ga. Ct. App. 2004); *Oasis Goodtime Emporium I, Inc. v. DeKalb County*, 272 Ga. 887 (2000); *Chamblee Visuals, LLC v. City of Chamblee*, 270 Ga. 33 (1998); *World Famous Dudley's Food & Spirits, Inc. v. City of College Park*, 265 Ga. 618 (1995); *Airport Bookstore, Inc. v. Jackson*, 242 Ga. 214 (1978);

And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Houston, Texas – 1983, 1997; Phoenix, Arizona – 1979, 1995-98; Chattanooga, Tennessee – 1999-2003; Los Angeles, California – 1977; Whittier, California – 1978; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Littleton, Colorado – 2004; Oklahoma City, Oklahoma – 1986; Dallas, Texas – 1997; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Amarillo, Texas – 1977; Jackson County, Missouri – 2008; New York, New York Times Square – 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota).

the City Council finds:

- (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- (3) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this Ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the

cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects.

The City hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

Section 2: Definitions.

For purposes of this Ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

“Adult Bookstore or Adult Video Store” means a commercial establishment which, as one of its substantial business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specialized sexual activities” or “specified anatomical areas.” A “substantial business activity” exists where the commercial establishment meets any one or more of the following criteria:

- (a) At least 25% of the establishment’s displayed merchandise consists of the foregoing items; or
- (b) At least 25% of the wholesale value of the establishment’s displayed merchandise consists of the foregoing items; or
- (c) At least 25% of the retail value (defined as the price charged to customers) of the establishment’s displayed merchandise consists of the foregoing items; or
- (d) At least 25% of the establishment’s revenues derive from the sale or rental, for any form of consideration, of the foregoing items; or
- (e) The establishment maintains at least 25% of its interior business space for the display, sale, and/or rental of the foregoing items (aisles and walkways used to access said items shall be included in “interior business space” maintained for the display, sale, or rental of said items); or
- (f) The establishment maintains at least five hundred square feet (500 sq. ft.) of its interior business space for the display, sale, and/or rental of the foregoing items (aisles and walkways used to access said items shall be included in “interior business space” maintained for the display, sale, or rental of said items) and limits access to the premises to adults only; or
- (g) The establishment regularly offers for sale or rental at least one thousand (1000) of the foregoing items *and* limits access to the premises or to the portion of the premises occupied by said items to adults only; or

- (h) The establishment regularly advertises itself or holds itself out, using “adult,” “XXX,” “sex,” “erotic,” or substantially similar language, as an establishment that caters to adult sexual interests; or
- (i) The establishment maintains an “adult arcade,” which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or “specified anatomical areas.”

“*Adult Cabaret*” means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features persons who appear semi-nude.

“*Adult Motion Picture Theater*” means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas” are regularly shown to more than five persons for any form of consideration.

“*Characterized by*” means describing the essential character or quality of an item. As applied in this Ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

“*City*” means the City of Dunwoody, Georgia.

“*Employ, Employee, and Employment*” describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

“*Establish or Establishment*” shall mean and include any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (c) The addition of any sexually oriented business to any other existing sexually oriented business.

“*Hearing Officer*” means an attorney, not otherwise employed by the City, who is licensed to practice law in Georgia, and retained to serve as an independent tribunal to conduct hearings under this Ordinance.

“*Influential Interest*” means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

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“*Interior Business Space*” means the floor area inside a sexually oriented business that is visible or accessible to patrons for any reason, excluding restrooms.

“*Licensee*” shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an “employee,” it shall mean the person in whose name the sexually oriented business employee license has been issued.

“*Nudity or a State of Nudity*” means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

“*Operate or Cause to Operate*” shall mean to cause to function or to put or keep in a state of doing business. “Operator” means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

“*Person*” shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

“*Premises*” means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

“*Regularly*” means the consistent and repeated doing of an act on an ongoing basis.

“*Semi-Nude or State of Semi-Nudity*” means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

“Semi-Nude Model Studio” means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

- (a) By a college, junior college, or university supported entirely or partly by taxation;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (c) In a structure:
 - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - (2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

“Sexual Device” means any three (3) dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

“Sexual Device Shop” means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

“Sexually Oriented Business” means an “adult bookstore or adult video store,” an “adult cabaret,” an “adult motion picture theater,” a “semi-nude model studio,” or a “sexual device shop.”

“Specified Anatomical Areas” means and includes:

- (a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“*Specified Criminal Activity*” means any of the following specified offenses for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (1) rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;
- (2) prostitution, keeping a place of prostitution, pimping, or pandering;
- (3) obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;
- (4) any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;
- (5) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (6) any offense in another jurisdiction that, had the predicate act(s) been committed in Georgia, would have constituted any of the foregoing offenses.

“*Specified Sexual Activity*” means any of the following:

- (a) intercourse, oral copulation, masturbation or sodomy; or
- (b) excretory functions as a part of or in connection with any of the activities described in (a) above.

“*Transfer of Ownership or Control*” of a sexually oriented business shall mean any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

“*Viewing Room*” shall mean the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

Section 3: Classifications.

The classifications for sexually oriented businesses shall be as follows:

- (a) Adult bookstore or adult video store;
- (b) Adult cabaret;
- (c) Adult motion picture theater;
- (d) Semi-nude model studio; and
- (e) Sexual device shop.

Section 4: License required.

- (a) Business License. It shall be unlawful for any person to operate a sexually oriented business in the City without a valid sexually oriented business license.
- (b) Employee License. It shall be unlawful for any person to be an “employee,” as defined in this Ordinance, of a sexually oriented business in the City without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.
- (c) Application. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the City Manager or his/her designee a completed application made on a form provided by the City Manager or his/her designee. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (d) herein and shall be notarized. An application shall be considered complete when it contains, for each

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person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
- (2) Current business address or another mailing address for the applicant.
- (3) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
- (5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this Ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i) been declared by a court of law to be a nuisance; or
 - (ii) been subject to a court order of closure or padlocking.
- (8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this Ordinance shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the City Manager or his/her

designee within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (d) Signature. A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this Ordinance and each applicant shall be considered a licensee if a license is granted.
- (e) The information provided by an applicant in connection with an application for a license under this Ordinance shall be maintained by the office of the City Manager or his/her designee on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order.

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Section 5: Issuance of license.

- (a) Business License. Upon the filing of a completed application for a sexually oriented business license, the City Manager or his/her designee shall immediately issue a Temporary License to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the City and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business license application, the City Manager or his/her designee shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Manager or his/her designee shall issue a license unless:
- (1) An applicant is less than eighteen (18) years of age.
 - (2) An applicant has failed to provide information required by this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this Ordinance has not been paid.
 - (4) The sexually oriented business is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of this Ordinance or the locational requirements of any other part of the City of Dunwoody Code or Georgia law, including the City of Dunwoody Zoning Ordinance.

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- (5) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
- (i) been declared by a court of law to be a nuisance; or
 - (ii) been subject to an order of closure or padlocking.
- (6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.
- (b) Employee License. Upon the filing of a completed application for a sexually oriented business employee license, the City Manager or his/her designee shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business employee license application, the City Manager or his/her designee shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Manager or his/her designee shall issue a license unless:
- (1) The applicant is less than eighteen (18) years of age.
 - (2) The applicant has failed to provide information as required by this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this Ordinance has not been paid.
 - (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i) been declared by a court of law to be a nuisance; or
 - (ii) been subject to an order of closure or padlocking.
 - (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.
- (c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the

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public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

Section 6: Fees.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: one hundred dollars (\$100) for the initial fee for a sexually oriented business license and fifty dollars (\$50) for annual renewal; fifty dollars (\$50) for the initial sexually oriented business employee license and twenty-five dollars (\$25) for annual renewal.

Section 7: Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the City Manager and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this Ordinance, but not to authorize a harassing or excessive pattern of inspections.

Section 8: Expiration and renewal of license.

- (a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Ordinance.
- (b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

Section 9: Suspension.

- (a) The City Manager or his/her designee shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this Ordinance or has knowingly allowed an employee or any other person to violate this Ordinance.
- (b) The City Manager or his/her designee shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if the employee has knowingly violated this Ordinance.

Section 10: Revocation.

- (a) The City Manager or his/her designee shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license,

as applicable, if the licensee knowingly violates this Ordinance or has knowingly allowed an employee or any other person to violate this Ordinance and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.

- (b) The City Manager or his/her designee shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:
 - (1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license.
 - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;
 - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
 - (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;
 - (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the premises of the sexually oriented business; or
 - (6) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to consume alcohol or appear in a state of semi-nudity or nudity on the premises of the sexually oriented business.
- (c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- (d) When, after the notice and hearing procedure described in this Ordinance, the City Council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

Section 11: Hearing; license denial, revocation, and suspension; appeal.

- (a) When the City Manager or his/her designee issues a written notice of intent to deny, suspend, or revoke a license, the City Manager or his/her designee shall immediately send such notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or licensee (hereinafter "respondent") by personal

delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the City Manager or his/her designee for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the City Manager, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the City Manager's or his/her designee's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued, and shall be subject to the provisions of subsection (b) of this Section.

If the respondent does make a written request for a hearing within said ten (10) days, then the City Manager or his/her designee shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The City shall provide for the hearing to be transcribed.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the City Manager's or his/her designee's witnesses. The City Manager or his/her designee shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written decision, including specific reasons for the decision pursuant to this Ordinance, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the City Manager or his/her designee to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the City Manager or his/her designee shall contemporaneously therewith issue the license to the applicant.

- (b) If any court action challenging a licensing decision is initiated, the City shall prepare and transmit to the court a transcript of the hearing, if any, within thirty (30) days after receiving written notice of the filing of the court action. The City shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed

with the City Manager or his/her designee: upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's denial, suspension, or revocation of a Temporary License or annual license, the City Manager or his/her designee shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the City's final administrative decision. The Provisional License shall not be construed to provide the applicant with any substantive right, entitlement, or claim of estoppel beyond the ability to continue operation or employment until the court enters judgment on the respondent's appeal or other action to restrain or otherwise enjoin the City's final administrative decision.

Section 12: Transfer of license.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

Section 13: Hours of operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

Section 14: Regulations pertaining to exhibition of sexually explicit films or videos on premises.

- (a) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:
 - (1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The City Manager or his/her

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designee may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
- (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.
- (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - (i) That the occupancy of viewing rooms less than 150 square feet is limited to one person.
 - (ii) That sexual activity on the premises is prohibited.
 - (iii) That the making of openings between viewing rooms is prohibited.
 - (iv) That violators will be required to leave the premises.
 - (v) That violations of these regulations are unlawful.
- (6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.
- (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by

direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

- (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- (b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly fail to fulfill that duty.
- (c) No patron shall knowingly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.
- (d) No patron shall knowingly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.
- (e) No person shall knowingly make any hole or opening between viewing rooms.

Section 15: Loitering, exterior lighting, visibility, and monitoring requirements.

- (a) It shall be the duty of the operator of a sexually oriented business to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting such property at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- (b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

- (c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.
- (d) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 16: Penalties and enforcement.

- (a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Ordinance shall, upon conviction, be punished by fines not to exceed one thousand dollars (\$1,000.00) per violation, or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be punished as such.
- (b) The City's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this Ordinance to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the City, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Ordinance, or any of the laws in force in the City or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

Section 17: Applicability of Ordinance to preexisting businesses.

All preexisting sexually oriented businesses lawfully operating in the City in compliance with all state and local laws prior to the effective date of this Ordinance, and all sexually oriented business employees working in the City prior to the effective date of this Ordinance, are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this Ordinance. By the end of said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this Ordinance.

Section 18: Prohibited conduct.

- (a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.

- (c) No employee who regularly appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.
- (d) No person shall sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.
- (e) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of a sexually oriented business.
- (f) No operator or licensee of a sexually oriented business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.
- (g) A sign in a form to be prescribed by the City Manager or his/her designee, and summarizing the provisions of subsections (a), (b), (c), (d), and (e), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

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Section 19: Scienter required to prove violation or business licensee liability.

This Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Ordinance. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this Ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

Section 20: Failure of City to meet deadline not to risk applicant/ licensee rights.

In the event that a City official is required to act or to do a thing pursuant to this Ordinance within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the City official under this Ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the City of an applicant or licensee's application for a sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the City's action has passed.

Section 21: Location of sexually oriented businesses.

- (a) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the City of Dunwoody, unless said sexually oriented business is at least:

- (1) 500 feet from any parcel in the City of Dunwoody zoned R-200, R-150, R-30,000, R-20,000, R-100, R-85, R-75, R-60, R-A5, R-50, R-A8, R-CH, R-CD, R-DT, RM-150, RM-100, RM-85, RM-75, RM-HD, MHP, TND, or NCD; and
- (2) 600 feet from any business in the City of Dunwoody licensed by the State of Georgia to sell alcohol on the premises; and
- (3) 1000 feet from any house of worship or a public or private elementary or secondary school in the City of Dunwoody.

- (b) Measurement. For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest point on a boundary line of the sexually oriented business parcel to the closest point on a boundary line of any parcel in the City of Dunwoody zoned R-200, R-150, R-30,000, R-20,000, R-100, R-85, R-75, R-60, R-A5, R-50, R-A8, R-CH, R-CD, R-DT, RM-150, RM-100, RM-85, RM-75, RM-HD, MHP, TND, or NCD. Measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of the structure containing the sexually oriented business to the closest part of any structure in the City of Dunwoody occupied by a house of worship, public or private elementary or secondary school, or a business licensed by the State of Georgia to sell alcohol on the premises.

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- (c) Preexisting Sexually Oriented Businesses. Notwithstanding anything to the contrary in the City of Dunwoody Code, a nonconforming sexually oriented business, lawfully existing in all respects under law prior to the effective date of this Ordinance, may continue to operate for one (1) year following that date in order to make a reasonable recoupment of its investment in its current location. At the conclusion of said one (1) year, the use will no longer be recognized as a lawful nonconforming use, except that a nonconforming sexually oriented business may obtain an extension of the original one-year period upon a showing of financial hardship. An application for an extension based upon financial hardship ("hardship exception") shall be made at least sixty (60) days before the conclusion of the aforementioned one-year (1-yr.) period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least sixty (60) days before the conclusion of the nonconforming sexually oriented business's current extension period.

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- (d) Procedure for Seeking Hardship Extension. An application for a hardship extension shall be filed in writing with the City Manager or his/her designee, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, appraised value of the property and/or leasehold interests, and costs of relocation. Within ten (10) days after receiving the application, the City Manager or his/her designee shall schedule a hearing on the application before the Hearing Officer, which hearing shall be conducted within thirty (30) days after the City Manager's or his/her designee's receipt of the application. Notice of the time and place of such hearing shall be provided to the applicant via certified mail at least ten (10) days before the hearing. At the hearing, all parties shall have the right to offer testimony,

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documentary and tangible evidence bearing on the issues; may be represented by counsel, and shall have the right to confront and cross-examine witnesses.

The Hearing Officer shall issue a written decision within ten (10) days after the hearing on the application for a hardship extension. The hardship extension shall be granted upon a showing of financial hardship. Such a showing shall be established if the Hearing Officer makes the following findings:

- (1) The applicant has, prior to the effective date of this ordinance, made a substantial investment, including but not limited to lease obligations incurred in an arms-length transaction, in the property or structure on or in which the nonconforming use is conducted;
- (2) The applicant will be unable to recoup said investment as of the date established for termination of the use; and
- (3) The applicant has made good faith efforts to recoup the investment prior to the conclusion of the one-year (1-yr.) period.

Any extension granted under the provisions of this Section 21 shall be for a reasonable period of time commensurate with the investment involved.

Section 22: Severability.

This Ordinance and each section and provision of said Ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

Section 23: Conflicting code provisions repealed.

Any provision(s) in the City of Dunwoody code of ordinances specifically in conflict with any provision in this Ordinance is hereby deemed inoperative and repealed.

Section 24: Effective date.

This Ordinance shall take effect immediately upon passage.